

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Verizon Petition for)	CC Docket No. 02-202
Emergency Declaratory and)	
Other Relief)	

COMMENTS OF COVAD COMMUNICATIONS COMPANY

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Introduction

Covad Communications Company (Covad), by its attorneys, hereby respectfully submits its comments in opposition to Verizon's Petition for Emergency and Declaratory Relief. Verizon, like the other Bell Operating Companies attempting to add similarly onerous security deposit and accelerated payment provisions to their interstate access tariffs, fails to provide adequate grounds for what amounts to an untimely, unwarranted and ill-justified power grab by the BOCs. The Commission must remember that all telecommunications carriers, not just ILECs, are affected by the fallout from telecommunications bankruptcies, especially major bankruptcies such as WorldCom.¹ All carriers suffer, ILEC and non-ILEC alike, from the loss of a major customer. Yet the BOCs would use the Commission's tariffing mechanisms to provide themselves added financial protections that come at the expense of the rest of the telecommunications industry. Furthermore, the BOCs' tariff revisions would deliver to them the unilateral power to drive other carriers into bankruptcy, including some of their competitors. The Commission must reject the BOCs' underhanded attempt at using other carriers' financial woes as an excuse to make a power grab. Verizon's self-styled petition for "emergency" relief, along with the BOCs' similar recent interstate access tariff revisions, must be rejected.

¹ Indeed, WorldCom is one of Covad's top 5 wholesale customers. Despite WorldCom's bankruptcy, Covad relies on its ongoing commercial relationship with WorldCom and effective operation of the nation's bankruptcy laws, rather than regulatory gamesmanship, to ensure that it receives timely payment for its services to WorldCom.

Covad's Need for Interstate Access Services

Covad is the leading nationwide provider of broadband connectivity using digital subscriber line (DSL) technology. Covad's nationwide facilities-based broadband network reaches nearly 45% of the nation's homes and businesses. Covad offers residential and business users a wide variety of innovative and competitively priced broadband services, and currently provides broadband connectivity to over a third of a million customers. Covad competes directly with the retail broadband offerings of the Bell Operating Companies, providing vital innovation and price pressure on the Bells that has sparked widespread DSL deployment in the five years since Covad launched the first commercial DSL offering in the nation. Covad provides residential consumers the nation's lowest price DSL offering, Telesurfer Link, which provides broadband connectivity at or below the price of dial-up services. Covad also offers consumers and small and medium-sized businesses a competitively priced alternative to incumbent LECs' high-priced T-1 services.

As a facilities-based provider, Covad relies on ILECs to provide unbundled transmission facilities (loops and interoffice transport) and the operations support systems (OSS) necessary to facilitate ordering and provisioning of such facilities. In addition, in order to connect customers to its network, Covad is collocated in hundreds of central offices throughout the nation. Although Covad has consistently pursued its right to collocate under section 251(c)(6) of the Act, in some cases it has purchased collocation under interstate access tariffs as an interim means of market entry. Furthermore, in many cases, Covad purchases interstate special access lines in order to complete parts of its network. Thus, Verizon's "emergency" petition, and the BOCs' concurrent attempts at

revising their interstate access tariffs, directly affect Covad's continued ability to purchase necessary interstate access services and use them to serve its customers.

Given the current crisis in the telecommunications sector, consumers and competitive carriers need the Commission's honest and diligent evaluation of Verizon's petition and the BOCs' anti-competitive tariff revisions now more than ever.

Bankruptcy Law Already Protects Creditors, including ILECs

Bankruptcy law already provides any legitimate financial protection sought by the ILECs, and circumscribes that relief to the class of carriers implicating their financial interests – namely, debtor carriers in bankruptcy. The bankruptcy courts have the authority and responsibility for providing adequate protection to creditors and must do so considering all circumstances. There is no need for the Commission to interfere with these proceedings in favor of the ILECs – this is a duty best left to the bankruptcy courts.² Verizon should not be permitted to override the workings of those courts by including preferential bankruptcy payment provisions for itself in its tariffs.

Indeed, on one side of its mouth, Verizon urges the Commission to refrain from interfering with bankruptcy law, so that it may extract the full extent of concessions from a carrier customer in bankruptcy.³ Meanwhile, through the other side of its mouth, Verizon arrives before the Commission urging that the Commission supplant the policy of bankruptcy law through Verizon's interstate tariffs. The Commission must not allow

² Indeed, the Commission should find it instructive that, in the WorldCom bankruptcy proceedings, the bankruptcy court has rejected similar demands by the BOCs for security deposits and advance payments from WorldCom.

³ See, e.g., Verizon Comments, *In the Matter of Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80.

the BOCs to have it both ways. The Commission should leave creditor-debtor relations to the bankruptcy courts, and concentrate its energies on enforcing its own rules, to ensure that consumers continue to have access to the best services at the lowest cost.

Verizon Petitions the Commission to Help the BOCs, at Everyone Else's Expense

What Verizon fails to explain is why the Commission should extend the burdens of financial protections that solely benefit ILECs to non-bankrupt carriers purchasing out of a dominant carrier's interstate access tariff. The rating of a carrier customer's credit in the financial markets is certainly no basis for imposing additional financial burdens on that carrier's purchase of necessary telecommunications services from a dominant provider. For example, the rating of credit in the financial markets bears no relation to the credit ratings applied to individual consumers. While individual consumer credit ratings are determined almost entirely by history of past debt payment, financial debt ratings entail the wholly subjective consideration of complex market-wide variables. If the Internet bubble of the 1990s is any guide, the business of debt rating is hardly science. Accordingly, it makes no sense to hand over to the ILECs the power to deny essential telecommunications services to carrier customers – many of whom are their direct competitors – based solely on subjective debt ratings in the financial markets.

Moreover, Verizon fails to explain why ILECs deserve greater financial protections than non-dominant carriers, who lack the competitive power to insist that their services come with “security deposit” and “advance payment” strings attached. Companies in a competitive industry would not be permitted by market forces to impose such unreasonable demands on their customers. If they did so and the customer had an

alternative supplier, then the customer would simply leave its current supplier rather than submit to the demands. That is not an option in the local telecom market, however, because competitive carriers are unable to simply replace all the services they receive from the ILECs with services from an alternative carrier. CLECs are captive customers of the ILECs, and thus need the Commission to prevent the ILECs from imposing unreasonable and discriminatory demands on them, so that they can continue to provide valuable competitive services to consumers.

Of particular concern are the BOCs' tariff provisions that would trigger security deposits or advance payments upon the commencement of a billing dispute. Competitive carriers routinely engage in billing disputes with the BOCs over large sums of money – often only to find out that the BOC was wrong.⁴ Certainly, the BOCs should not be allowed to drive carrier customers already facing a difficult financial environment into deeper financial throes by exacting a security deposit or advance payment over unpaid, disputed billing amounts.

Verizon's Proposed Financial Protections are Ill-Timed – Except to Drive Competitors out of Business

Perhaps the most striking feature about Verizon's petition is just how ill-timed it is. As just about every individual investor is aware, the telecom bubble of the '90s has already burst. Unfortunately, Verizon would have the Commission labor under the illusion that the only telecommunications sector news awaiting the public is wave-upon-wave of telecom bankruptcies. Verizon would have the Commission believe it's better to

⁴ Indeed, over the course of the last six months alone, Covad has successfully recouped millions of dollars in billing overcharges from incumbent LECs.

kill of the weak now, so that the strong might survive. And, naturally enough, the BOCs' tariff revisions would enable that prophecy to come true.

The Commission must recognize that those still standing in the competitive telecommunications sector, like Covad, are still standing because they will, and should survive. The BOCs' interstate tariff revisions are not simply an attempt to keep the financial ills of struggling carriers from infecting the rest of the industry. In fact, they would impose additional financial burdens on the very competitors who can weather the financial storms that have pummeled the telecommunications industry. The Commission should reject the BOCs' attempts to perform an end-around the bankruptcy courts, so that they might inflict further damage on those who stand most effectively poised to compete with them in the years ahead.

Conclusion

Accordingly, Verizon's petition, and the BOCs' similar interstate access tariff revisions, should be rejected.

Respectfully submitted,

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